

COMPLIANCE BUYS

A national study of vendor practices found program violations of overcharging, failures to maintain minimum stock, food substitutions, and failures to record the purchase prices when completing the sales transaction. Violations such as these cost the program millions of dollars per year. Compliance buys are one way of identifying program abusers.

Program violations which can be observed during compliance buys include:

- Charging sales tax for food purchased with WIC checks
- Charging for foods that were not provided to WIC clients
- Allowing the purchase of non-approved WIC foods
- Allowing a person to receive non-food items in exchange for WIC checks
- Charging more than the shelf price for authorized food items
- Exchanging cash for WIC checks
- Allowing a person to exchange WIC food items for cash or non-approved WIC foods
- Obtaining the client signature prior to filling in the "Total Amount Purchased" box
- Providing rain checks in lieu of food items
- Accepting WIC checks for payment on credit accounts
- Discriminating against WIC clients
- Selling WIC foods past the manufacturer's expiration date on the container
- Failing to maintain minimum stock requirements

Selection of Vendors for Compliance Buys

Compliance buys are conducted on a minimum of five percent of authorized vendors each year. Compliance buys should first be conducted on vendor's that are identified as high risk. If less than five percent of a LA's vendors are high risk, then the LA must randomly select an additional number of vendors to meet the five percent minimum.

A compliance investigation may be considered complete when the State Agency (SA) determines that a sufficient number of compliance buys have been conducted to provide evidence of program non-compliance, when two compliance buys are conducted in which no program violations are found, or when an inventory audit has been completed.

If more than five percent of vendors are identified as high risk, the SA must prioritize such vendors to perform compliance investigations on those determined to have the greatest potential for program non-compliance and/or loss of funds.

High-risk vendors are identified by a statistical analysis of checks processed for payment during each quarter. LA's also contribute to the identification of high-risk vendors by communicating alleged abuses or contractual violations reported by either clients or staff.

During each federal fiscal year, the SA will identify vendors for monitoring and compliance buys. The list of vendors subject to compliance buys will include the purchasing practices to be attempted. Compliance buys conducted at high risk vendors should be designed to mimic the abuse/behavior the vendor is at risk for. If, during the first buy a violation is discovered, the second buy should be conducted using the exact same buy techniques.

Planning Compliance Buy Activities

Investigators or aides who may have a conflict of interest in the outcome of any compliance investigation shall not be used.

Although women are most often the food shoppers for a family, men redeem enough WIC checks to be a compliance buy shopper. Individuals conducting compliance buys should attempt to arouse as little suspicion as possible. Therefore, the shopper should try to look like a client who lives in the neighborhood where the store is located. If the store is in a Spanish-speaking neighborhood, the investigator should speak Spanish. Vehicles driven to the compliance buys should also blend in with the neighborhood.

Cover stories on where the investigator's family lives and works, as well as relevant details such as how long the family has been in the area must be prepared prior to the store visit. The SA will assist the investigator in developing case scenarios. There is no reason to volunteer information regarding participation in the program, but the investigator will need to be prepared to respond to direct questions asked as well as supply information requested such as a proxy card or other identification. The less spoken during the WIC transaction, the better.

The investigator must completely understand the cover story and all applicable Policies and Procedures relating to the WIC food delivery process. SA staff will review materials from the Policy and Procedure manual and the cover story with staff conducting the compliance buy. This will ensure that the individual understands how to use WIC checks at the store and how to issue finding points for program violation(s) at the store.

While each compliance buy will focus on a specific type of program abuse, the investigator must be alert to other errors occurring during the sales transaction while in the store.

The SA will issue all checks used for compliance buys. The check numbers and date(s) of all the checks that were redeemed at the store must be recorded on the compliance buy investigation report. The SA has found it helpful to make a photocopy of the checks to be used prior to going to the store location.

Training will stress the need for clear and accurate observations while in the store and how to complete all reports. The *Compliance Buy Report: Kansas WIC Program* report should be forwarded to the SA upon completion of the compliance buy. Training will also include identifying possible program violations such as charging sales tax on the check, out of product, returning WIC foods for cash or non-food products, rude and/or discourteous treatment of clients or differential (discriminatory) treatment of WIC clients. The investigator will be trained sufficiently to be able to note any unexpected violations while at the store.

A shopping list will be provided to the investigator at the time the cover story is furnished. Before entering the store, the investigator should take time to shop and/or observe general activity in the store. When selecting foods, the item price should be recorded on your shopping list. This information is needed for the report upon completion of the compliance buy. When ready, take all items to the check-out counter and present the check(s) unsigned and undated

prior to the start of the transaction. Prior to the transaction separate WIC items from any other foods being purchased.

The compliance buy should be completed without entrapment. Entrapment is defined as the act of inducing persons to commit a crime not contemplated for the purpose of instituting a criminal prosecution. The mere act of furnishing the suspect an opportunity to commit the crime, where the criminal intent was already present in the suspect's mind, is not ordinarily entrapment. Generally the entrapment forbidden by law depends on whether or not the activity leading up to the violation amounted to putting it in the mind of a person who had no prior inclination to violate and leading them to do it for the first time. If investigators merely provide an opportunity for a suspected violator to continue on a course of criminal conduct, this does not constitute entrapment.

Investigators should make no appeals to sympathy and do nothing that could imply coercion. Do not give any kind of "sob story" to create sympathy. Although the object of the investigation is to determine whether or not the store is abusing the program, never demand that the clerk provide unauthorized items in exchange for WIC checks. These behaviors could lead to findings of entrapment.

Try to be passive and let the store employee take the initiative. Let the clerk decide what to do. If the clerk suggests that unauthorized items can also be purchased with checks or in some other way openly suggests abuses of program regulations, go along with it. Do not initiate the abuse other than to put the unauthorized goods on the counter. Attempt to remember all conversation during the transaction. If told by the check-out clerk that, unauthorized items cannot be purchased with the check, return them for the proper foods. Do not give the cashier an argument; this could be considered entrapment. Leave the store if threatened or if other problems occur.

Observe carefully what transpires so the report of the investigation can be completed immediately after leaving the store. Watch for nametags and/or listen for any name that might be called out so the cashier can be identified on the report. Follow any special system used in the store to checkout WIC clients although Federal Regulation prohibits discrimination by a vendor when dealing with WIC clients. Special lines for processing the checks are prohibited, as is any behavior calling attention to the fact that a WIC check is being processed.

Most compliance buys will involve one or more of the following actions:

1. Purchasing other than the least expensive brand of approved food or non-approved WIC foods. Foods purchased will stay within the general food category, e.g. adult cereals, eggs etc.
2. Purchasing less than the amount of approved WIC foods shown on the check.
3. Purchasing non-food items such as soap or candy.
4. Purchasing exactly what is on the check.

Compliance buys are conducted as a series of separate transactions. If, after two separate compliance buys, no violations are found, the compliance investigation of that vendor is over. If violations are found on the first compliance buy, then additional compliance buys are needed to establish a pattern of violations.

If subsequent compliance buys are required, a different cashier from the first visit should be used for check-out procedures, if possible. A minimum of two (2) compliance buys per store will be conducted unless otherwise directed by the SA.

Compliance Buy Investigation Report

Prior to the visit, fill in the store's name and address, and the check numbers and types of checks to be used. As soon as possible after the store transaction, complete the *Compliance Buy Report: Kansas WIC Program*, while the facts are still clear. Precise information about brand names and sizes of the containers (e.g. two 46 oz. cans of Juicy Juice at \$.99 each) are essential to the validity of the report. A report must be made every time an investigative visit is made to a store. Photograph the purchased items and submit photographs with the report. Use of a simple, disposable camera is allowed.

The LA will provide the original copy of the *Compliance Buy Report: Kansas WIC Program* to the SA within five (5) days to determine if additional purchases are necessary. The report must be legible.

The SA will request that the banking service return check(s) used in the compliance investigation to the SA. The checks will be compared with the investigative report to detect alterations in quantities, unit prices and check totals.

Disposal of Items Purchased During Compliance Buys

All items purchased through compliance buys must be donated to food banks or other charitable organizations. Alcoholic beverages purchased should be retained as evidence until destroyed or dumped and the action witnessed by persons not associated with the WIC program. Cash received for checks must be retained for evidence and forwarded to the SA.

Procedure Following Completion of Investigation

After all investigations have been conducted and findings of the investigations reviewed, a decision regarding the vendor's future participation in the WIC Program will be made by the SA. If as a result of the investigation it is clear that a vendor has engaged in fraudulent activities affecting the WIC program, the SA will notify the vendor in writing of sanctioning and/or disqualification from the WIC program and the right to appeal. All requests for hearings must be submitted within fifteen (15) days of receipt of the above notification. The SA will render a decision on the merits of the appeal within sixty (60) days from the receipt of the appeal request.